OPEN MEETING AGENDA ITEM

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BEFORE THE ARIZONA CORPORATION COMMISSION

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BRENDA BURNS, COMMISSIONER

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS 2015 RENEWABLE ENERGY STANDARD IMPLEMENTAITION PLAN.	**DOCKET NO. E-01933A-14-0248** **RESPONSE TO STAFF**

ORIGINAL

THE ALLIANCE FOR SOLAR CHOICE RESPONSE TO STAFF'S NOVEMBER 3, 2014 OPEN MEETING MEMORANDUM

The Alliance for Solar Choice ('TASC'), through its undersigned counsel, respectfully submits this response to the November 3, 2014 Utilities Division Staff Report on Tucson Electric Power's ('TEP') 2015 Renewable Energy Standard ('REST') Implementation Plan. TASC focuses these comments on the Staff Report as it relates to TEP's proposed utility-owned, residential DG ('UODG') program discussed on pages 5-9 of the Staff Report, which TASC opposes.

The Staff Report treats the UODG program as if it is a typical utility proposal to build new solar generating capacity,[1] such as APS's AZ-Sun, TEP's Bright Tucson Solar, TEP's

[1] Staff Report p. 7 ("In essence TEP's proposal is a way of treating company-owned rooftop DG in a manner similar to traditional generation resources, which are constructed and then put into rate base in future rate proceedings after review by the Commission.")

Springerville Expansion, TEP's Tucson Airport projects and TEP's Fort Huachuca. The Staff Report fundamentally errs in this respect. Unlike prior utility proposals, TEP proposes an entirely new type of private service, which is not a public service, and to establish a new rate, for a new class of participating customers, that would receive electric utility service under a 25-year, fixed-rate tariff that is not based on customer consumption or cost of service. This proposal is entirely distinct from past utility proposals that simply propose new utility-owned solar generating capacity.

TEP argues that its UODG tariff is similar to the Bright Tucson Community Solar Program that was approved by the Commission and contains a fixed rate for 20 years.[2] However, that program only allows customers to purchase 1 kW blocks of solar energy generation from a shared community solar facility. Under the Bright Tucson Community Solar Program, power consumed over and above the block purchase would be billed at the standard rate that is applicable to other ratepayers.[3] TEP's UODG proposal is fundamentally different and proposes to charge participating customers a flat rate per month regardless of customer consumption, the output of the onsite solar generating facility, or the cost of serving the participating customer. This is fundamentally different than allowing customers to purchase power in 1 kW increments though the Bright Tucson Community Solar Program.

Acting on a mistaken assumption that this proposal is like other utility proposals, Staff ignores that the Commission lacks authority to approve the TEP UODG tariff that TEP has proposed in this proceeding. Rates need Commission approval, and Constitutional ratemaking requirements prohibit the Commission from approving TEP's proposed new rate and new class of customers outside of a rate case. Even assuming the Commission could approve the TEP UODG proposed rate outside a rate case, which TASC disputes, the Commission lacks authority to approve TEP's proposed rate because it is not based on consumption or cost of service, and, if approved, it would not be reviewable or subject to modification by the Commission for a 25-year term. The Commission cannot approve a tariff for a new class of customers without any analysis

[2] TEP's Response to TASC Opposition, page 3 (Nov. 10, 2014).

[3] Decision No. 71835, *In the Matter of TEP's Application for Approval of Its Renewable Energy Standard and Tariff Implementation Plan – Bright Tucson Community Solar Program*, ¶ 14 Docket No. E-01933A-0340.

of the actual costs of serving those customers, and it cannot bind future commissions regarding rates for a 25-year period. Approval of TEP's proposed UODG tariff would violate the Arizona Constitution's long standing ratemaking principles, and the public's interest in paying just and reasonable rates.

TEP's proposal is barely three pages (double spaced), the tariff is a single page, and the portion of the Staff Report related to this issue spans barely three more. Staff did not analyze the costs of this proposal or consider lower cost alternatives. Moreover, the contract to implement the UODG program has not been provided and fundamental legal problems are entirely unaddressed. Even assuming a tariff (and hypothetical contract governing service) could be approved outside a rate case, which it cannot, there is no basis in the record of this proceeding to determine whether TEP's proposed rate for the new service it proposes is just or reasonable. The Commission has a constitutional responsibility to determine that proposed utility rates are just and reasonable. That responsibility cannot be discharged based on the record of this proceeding.

The Staff Report acknowledges that Staff has no idea what TEP's program will actually cost ratepayers.[4] The Staff Report fails to analyze the cost of the program because Staff states that cost recovery for the proposed UODG assets can be addressed in TEP's next general rate case.[5] TASC disagrees. TEP proposes to invest in assets that would be used to serve private interests, not a public function. No amount of such assets can be included in a utility's rate base. This important legal issue aside, Commission should not grant approval for a program that is both unneeded and unnecessarily expensive at this time when it knows the utility would use this approval to attempt to justify cost recovery in a future rate case. Further, to the extent the Commission would even consider granting approval now, it should not do so without any sense of the cost of the program compared to alternatives.

Taking these paramount considerations into account, the Commission should not authorize TEP to move forward with its UODG program. The Commission lacks jurisdiction over the proposed activity. The Commission cannot approve the proposed rate in this proceeding

[4] Staff Report p. 7 ("There are many uncertainties regarding how the program would fare in the marketplace in comparison to other existing methods of rooftop DG deployment.")
[5] *Id.*

(or any proceeding if the rate is to be fixed and unreviewable for 25 years), and the Commission may not authorize TEP to include the proposed assets in rate base. These defects in the TEP UODG proposal raise significant unanswered questions about the prudency of TEP's proposal. TEP also may not claim any investment in UODG assets to be prudent in a subsequent rate case when lower cost options for achieving REST compliance exist today and are being presented as alternatives in this proceeding.

I. The Commission Should Reject TEP's High Cost UODG Program And Investigate Lower Cost Alternatives.

TEP, Staff, and RUCO state TEP needs additional DG to meet 2015 REST requirements. The Commission should consider how TEP can meet its REST requirements at the lowest overall cost to its ratepayers. The Commission, Staff and RUCO have previously stressed the importance of using ratepayer funds economically and efficiently to achieve the REST requirements.[6] Nevertheless, the Staff Report fails to consider lower cost alternatives. TEP's UODG proposal is not the lowest cost alternative. Several alternatives are available that will permit TEP to meet its REST requirements at substantially lower cost to ratepayers.

To the extent TEP is not exceeding its residential DG requirements under the REST, such shortfall is a result of TEP not acquiring RECs for systems installed in its service territory in 2014. TEP proposes to make up for its failure by proposing to build entire systems so that it can then own the RECs. Simply acquiring RECs is likely a far cheaper alternative for TEP's ratepayers than buying and rate basing systems for a select group of customers to generate RECs.

REC purchases are the lowest cost means of achieving the REST. The November 3, 2014 Staff memorandum on the APS UODG proposal issued in Docket No. E-01345A-14-0250 reaches this conclusion in analyzing APS's UODG proposal. Unfortunately, no consideration of lower cost alternatives was considered in the Staff Report on the TEP UODG proposal. Current

[6] See, e.g., Decision No. 71702 ("The Proposed RES Rules require Commission approval of Tariffs and annual implementation plans filed by the Affected Utilities *so that the Commission can ensure the economical and efficient use of ratepayer funds* in order to meet the goals of the Proposed RES Rules."); Decision No. 72737, ¶ 14 ("Without a budget impact comparison of Green Choice Solar's proposals to the APS and Solar Alliance proposals, *it is impossible to determine which proposal offers the ratepayers the best long-term deal.*"); Decision No. 74365, ¶ 14 (noting Staff concern re minimizing cost to ratepayers when evaluating a utility proposal for compliance with REST rules); Decision No. 74165, Dissent by Commissioner Brenda Burns ("my focus as a Commissioner has been to apply ratepayer funds in a way that puts as much renewable energy on the grid for the lowest cost possible.")

voluntary market prices for RECs are $.00125/kWh or $1.25/MWh,[7] allowing TEP an opportunity to meet REST compliance at a fraction of the cost of the proposal under consideration. Though TEP has not provided complete information on the total program costs and revenue requirements, TASC's analysis shows that TEP proposed costs per kWh by comparison are $0.15-0.19/kWh. No Arizona REC market currently exists to facilitate price discovery for a given quantity of RECs. However, a simple reverse auction would allow TEP to determine the cost of REST compliance through REC purchases so that it, and the Commission, can determine the potential savings associated with REC purchases as compared to TEP's very expensive and illegal UODG proposal. Arizona RECs do not currently have a market, but a conservative estimate of potential savings, using a proxy of $5/MWh or $.005/kWh, shows TEP's proposal is almost 40 times more expensive than procuring RECs through a reverse auction.

As an alternative to a market-based REC auction, and in keeping with the Staff proposal in the 2015 APS REST Plan Proceeding, the Commission could authorize a fixed REC payment to solidify REC acquisition from TEP customers at a cost that is substantially less than the cost of the TEP UODG proposal. For example, recent analysis places the cost of installed solar capacity at roughly $4.00/watt installed on average.[8] Using the expired incentive number as a model, the Commission could achieve the same result that TEP proposes by initiating a $0.10/watt payment for RECs and achieve the same goals that TEP seeks to achieve at 1/40th the price. In the alternative, the Commission could solve TEP's REST compliance issue at a substantially lower price than TEP's UODG option by issuing a permanent waiver to TEP for two years of residential DG compliance.

II. TEP's UODG Proposal Contains Numerous Legal Defects That Prevent TEP's UODG Proposal From Being Approved In This Proceeding.

TEP proposes to invade a currently competitive market for onsite solar service to provide a 100% ratepayer-subsidized private service that is entirely distinct from the public service that TEP currently provides as a state-sanctioned monopoly. TEP proposes to own, operate and

[7] *See* http://apps3.eere.energy.gov/greenpower/markets/certificates.shtml?page=5.
[8] Cite to TASC prior opposition.

maintain solar generating facilities on the premises of select residential customers.[9] TEP would install an approximately 6 kW-DC solar system on about 500-600 homes, at a total cost of $10 million and an aggregate capacity of about 3.0 to 3.5 MW.[10] The stated cost would be $2.85 - $3.00 per watt-DC.[11] The utility would charge the participating customer a flat $99 per month, fixed rate, for 25 years, for *all* of the customer's electricity usage, so long as the customer does not increase usage by more than 15% from pre-solar levels.[12]

With this proposal, TEP seeks to untether the rates it proposes to charge residential customers from a customer's consumption and its cost of serving those customers. The Commission cannot approve the proposed TEP UODG rate outside a rate case, particularly given that insufficient information exists upon which to determine if the proposed rate, which could not be adjusted for 25 years, is just and reasonable. Even assuming these defects could be cured, the Commission lacks jurisdiction to approve TEP's UODG tariff and the Commission cannot authorize TEP to include the cost of providing a private service in TEP's rate base.

A. The Commission Lacks Jurisdiction To Approve The UODG Tariff And It Cannot Authorize TEP To Include UODG Assets In TEP's Rate Base.

The Commission may not authorize a utility to engage in non-public services over which it does not have jurisdiction. There can be no doubt that the service TEP proposes to provide is a ratepayer-subsidized private service, not a public service. TEP proposes to provide service to a limited number of customers and to do so under private contract. TEP proposes to size a solar system to meet 100% of a participating customer's onsite energy needs, and to charge a flat fee to the participating customer for 100% of the customer's consumption for a 25-year period, regardless of whether the customer's energy needs are fully satisfied by the onsite solar system and regardless of the utility's actual cost of serving the customer.[13] As we discuss above, this is an entirely different proposal than the Commission approved for the Bright Tucson Community Solar Program.

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[9] Plan page 9.
[10] Plan page 8.
[11] TEP Response to Staff's First DR, Question 1.07.
[12] Plan page 8.
[13] *Ibid.*, also TEP Response to Staff's First Set of Data Requests, Question 1.13.

Arizona courts apply an eight-factor test to determine whether a service is a public service subject to the Commission's jurisdiction. *Natural Gas Serv. Co. v. Serv-Yu Cooperative*, 70 Ariz. 235, 219 P.2nd 324 (1950). Several of the eight *Serv-Yu* factors counsel that TEP's proposed service is not a public utility service, including 1) whether facilities are dedicated to private use, versus public use; 2) whether only a limited number of requests for service would be accepted, versus accepting substantially all requests; and 3) whether service is provided under private contract, versus a generally applicable tariff. *Id.* With the UODG proposal, TEP proposes to dedicate a limited number of generators to private use, under private contract, with a fixed rate that will be unreviewable for 25 years. Under the *Serv-Yu* factors, this is private service, not a public service. The Commission cannot authorize a utility to provide a private service that is not subject to its jurisdiction, and the assets associated with a private service must be excluded from a utility's rate base. TEP admits that the service it proposes is not a public service in a response TEP filed to TASC's opposition on November 10, 2014. In its response, TEP states with regard to the UODG rate it proposes: 'Notably, this is not a monopoly service rate.'[14]

A public service corporation has a duty to provide adequate, efficient, and reasonable utility service to its customers and must support and defend its plant as prudently acquired and used and useful in order to gain recovery on and of its asset in rate base. Decision No. 73130, p. 14. Arizona's Constitution, Article XV, Section 14, requires the Commission to ascertain the fair value of a utility's property and use such findings as a rate base for determining just and reasonable rates. Morris v. Arizona Corp. Comm'n, 539 P.2d 928, 929 (Ariz. Ct. App.1975). 'Rate Base' is the dollar value of the physical assets prudently acquired and used and useful in the provision of utility service. 2010 AZ Regulation Text 4729; 258 P.U.R.4th 353,258 P.U.R.4th 353. A utility's rate base is determined by the fair value of its properties devoted to the public use. *Arizona Corp. Comm'n v. Arizona Water Co.*, 85 Ariz. 198, 203 (Ariz.1959) ('Under the law of fair value a utility . . . is entitled to a fair return on the fair value of its properties devoted to the public use, no more and no less.')

[14] TEP's Response to TASC Opposition, page 4.

Assets dedicated to private use may not be included in a utility's rate base and recovered in rates. When a company operates a business independent of its activities as a public utility, subtraction should be made from rate base for the portion of property 'used for purposes other than service to the public as a utility.' *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 152,294 P.2d 378, 382,1956 Ariz. LEXIS 191, 12(Ariz.1956) ('There was evidence that the company is operating a mercantile business independent of its activities as a public utility. In operating this mercantile business, it used land, building, and fixtures, the total value of which was included in arriving at the plant value . . . Some subtraction was properly made for the portion of the property being used for purposes other than service to the public as a utility.'); Principle discussed in 73 C.J.S., Public Utilities, § 18 ('property which is partially or wholly devoted to a private use, as distinguished from the public service, should be excluded from the rate base to the extent of such use.') TEP proposes to provide service to a limited number of customers, under private contract, pursuant to which TEP will size a solar system to meet 100% of a participating customer's onsite energy needs, and to charge a flat fee to the participating customer for 100% of the customer's consumption for a 25-year period. TEP claims that 100% of the cost of this service will be recovered from participating customers. There can be no doubt this is a private service, not a public service.

B. This Commission Cannot Bind Future Commissions For A 25-year Period To Specific Rates For A Commodity, Particularly When The Cost Of Providing Service Is Unknown.

TEP proposes to enter a private contact with residential customers under which TEP will charge those customers a fixed rate for a 25-year period. This would bind future Commissions with regard to residential rates being charged to a new class of customers for a very long period of time. This is inconsistent with long standing Commission practice that 'The Commission ... cannot bind future Commissions with regard to rates.' *In The Matter Of Arizona Public Service Company's Application For Approval Of Net Metering Cost Shift Solution*, Docket No. E-01345A-13-0248, Decision No. 74202, 310 P.U.R.4th 121, A.C.C. 2013, December 03, 2013.

Approval of the proposed UODG rate would be particularly egregious because TEP has provided scant information on the anticipated costs of providing UODG service, and Staff has not carefully reviewed the proposed costs.[15] In fact, TEP has refused to provide project revenue requirement numbers making it impossible to judge the merits of this proposal.[16] Staff states that costs can be reviewed for reasonableness and prudency in a subsequent rate case.[17] However, under the proposed 25-year private contract, future commissions would have no ability to modify the UODG rate in a subsequent rate case to ensure that the rate being charged to participating customers is just and reasonable in light of the actual program costs that would later be disclosed in the rate case. Approving a new tariff without a clear understanding of the underlying cost of service does not comport with long standing Commission practice for setting rates and would violate Arizona's constitutional ratemaking requirements.

C. The Commission Cannot Approve the UODG Tariff Outside of a Rate Case

a. The Arizona Supreme Court has held that a proposed rate cannot be approved outside of a rate case proceeding because a determination of the fair value of a utility's assets is necessary to determine that rates are just and reasonable.

The Commission cannot fulfill its Constitutional mandate to ensure that customers are paying 'just and reasonable' rates when a new rate schedule or tariff is proposed outside of a rate case. According to the Arizona Supreme Court, the Commission 'is required by our Constitution to ascertain the value of a utility's property within the State in setting just and reasonable rates.' *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 534 (1978) (citing Ariz. Const. art. 15 § 14). To ensure just and reasonable rates, the Commission must follow a sequence: (1) determine the fair value of a utility's property (used as the utility's rate base); (2) determine the appropriate rate of return; and (3) 'apply that figure to the rate base in order to establish just and reasonable tariffs.'[18] When a change in rates is proposed that implicates a change in the rate base, revenue requirement or authorized rate of return, it is necessary to engage the formalities of the rate

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[15] Staff Report p. 7 (claiming costs can be reviewed in a future rate case).
[16] TEP indicates that it will seek recovery of these costs in its next rate case through the inclusion of the undepreciated book value of the facilities in its rate base, in its response to TASC Date Request (DR) 1.05.
[17] Staff Report p. 7.
[18] *Id.*

making process to ensure just and reasonable rates, even in circumstances where a change to only a single tariff or rate is implicated.[19] TEP argues the 'overall impact on TEP's revenues and fair value rate of return is *de minimus*.'[20] There is no record to support TEP's claim, and even if there was, this is no justification for ignoring constitutional ratemaking requirements.

Under the weight of this Constitutional duty, the Commission is limited to rare circumstances where it may avoid the formalities of a rate case to change existing rates or establish new rates. The *Scates* court made it clear that rates must be made in a rate case setting except for limited, narrow situations. As the court observed in *Scates*, the two primary situations where rates may be altered outside of a rate case proceeding are (1) where an interim rate is being pursued, 'with appropriate safeguards to insure that rates will not become permanent until there is adequate inquiry into whether they are just and reasonable;' and (2) where a change in rates charged is pursuant to automatic adjustment clause that is established to recover narrowly, defined operating expenses during the course of a rate proceeding.[21] In addition to these circumstances, the *Scates* court recognized a third scenario possible using the Commission's broad discretion, noting that 'there may well be exceptional situations in which the Commission may authorize partial rate increases without requiring entirely new submissions.'[22]

None of these circumstances exist. First, the UODG is proposed as a permanent rate (i.e., customers will lock in their rate for 25 years prior to the time TEP even files its next rate case) and therefore it cannot fall within the interim rate exception in *Scates*. Qualifying customers taking service under the UODG tariff will abandon their existing residential tariff—which is based on volumetric collection of the revenue requirement from customers in the class— for this novel tariff based on an averaged monthly fixed payment. In addition to being fixed, this tariff has a band of tolerance of +/- 15% of annual average consumption where the charges for electricity received is not tethered to the actual volume of metered kWhs. The proposed UODG tariff is a substantial departure from any existing means of collecting the revenue requirement from members of a class, and the Commission would have no ability to adjust the rate for

[19] *Id.* at 534-35.
[20] TEP's Response to TASC Opposition, p. 4.
[21] *Id.* at 536.
[22] *Id.* at 537.

participating customers if it later determines that the actual cost of serving participating customers far exceeds the rate they are being charged under the 25-year contract. Second, the UODG is a new tariff, so it could not fall within the *Scates* exception for automatic adjustment clauses determined within the record of a previous rate case, such as utility REST charges. Lastly, the UODG tariff has not been described as addressing an exceptional circumstance that would justify the Commission utilizing its discretion to determine fair value with something less than the normally required comprehensive informational filing.

TEP attempts to point to REST Tariffs and net metering tariffs as examples of tariffs being approved outside a general rate case.[23] Neither example provides cover for TEP's UODG tariff. The REST Tariffs are an example of automatic adjustment clauses that fit within the second *Scates* exception, and net metering tariffs do not set rates charged for electric services. These examples are simply inapt.

b. TEP's request for approval of its UODG tariff is an attempt to unlawfully establish a new rate outside of a rate case proceeding.

There can be no doubt that the UODG tariff involves the establishment of a new rate. The proposed UODG tariff attempts to approximate the average bill amount a residential customer would face over the course of an annual billing period, but it does so in a manner that is not strictly tied to the volume of consumption. Depending on a customer's usage in any given year, as compared to the established baseline average bill amount, the equivalent volumetric payment for electricity may be greater or lesser than the status quo, meaning residential customers taking service under this tariff would inevitably pay more or less than each other and more or less than customers that are not in this rate class. In other words, if the customer were to divide the bill established under the UODG by total kWhs consumed over the year—and the customer had consumed 14% less than the baseline, average amount—the amount that the customer pays for a kWh would substantially increase. No justification has been provided for the discriminatory treatment of customers that would result.

[23] TEP's Response to TASC Opposition, p. 4.

This new practice and means of collecting revenue is a distinct and new rate structure that is being offered outside of a rate case proceeding. The Commission may not approve a new rate, such as this, outside of a rate case because it lacks the tools to determine if the rates are just and reasonable according to Constitutional requirements. Given the elements of the proposed UODG tariff, the Commission may not avoid its Constitutional duty to first determine 'fair value' under any of the *Scates* exceptions, and if the proposed assets do not serve a public function, the value of those assets must be excluded from rate base.

The Commission has been unwilling to engage in a 'mini rate case proceeding' to approve stand-alone tariffs.[24] In D.70677, the Commission gave a clear statement of its disfavor for 'single-issue' ratemaking:

> Utility ratemaking begins with an analysis of cost of providing service and ends with rates that are designed to collect the appropriate costs and allow the utility the opportunity to earn a reasonable return on the fair value of its property necessary to provide that service. All elements that go into the ratemaking formula to set just and reasonable rates have a temporal quality. Once a representative test year's operating costs, revenues, and fair value are analyzed, verified, audited and determined to be prudently incurred and properly matched in a rate case proceeding, just and reasonable rates are set by the Commission. To later modify the rates by changing only one input into that balanced, properly matched ratemaking formula undermines the ongoing justness and reasonableness of the rates, because the rates are no longer related to the fair value as required by the Constitution.[25]

The Commission must abide by its Constitutional duty and reject invitations to engage in single-issue ratemaking outside of a rate proceeding, such as TEP has proposed here. In fact, just last year the Commission refused to make any modifications to the E32L rate class in the REST proceeding when solar customers, including several schools, were hit with rate design changes that resulted in substantial negative consequences for schools with solar. Despite several stakeholders asking the ACC to right this unintentional wrong created when rates were set in the 2012 APS Rate Settlement, stakeholders were told that the Commission was powerless to modify the rate in a REST proceeding. TEP's proposed UODG tariff would be a clear transgression of the state's Constitutional ratemaking requirements given the lack of information

[24] *Interim Rate Case Order and Opinion*, ACC Docket No. E-01345A-08-0172, D.70677 at p. 30 (December 24, 2008).
[25] *Id.* at p. 26.

upon which to determine whether the proposed UODG rate in any way reflects the cost of the proposed program.

c. There is no factual basis in the record to determine whether the UODG tariff could result in a just and reasonable rate.

When a utility files for a rate change or increase under ordinary circumstances (i.e., in a rate case application), Commission regulations require the submission of sufficient data and information to determine the fair value of the utility's assets and, subsequently, whether the specific rates being proposed are just and reasonable in light of that evidence. Among other things, Commission Rule R14-2-103(G) requires utilities to provide cost of service information with schedules showing the approach used in allocating or assigning plant and expenses to classes of service. Using this information, the utility can propose allocating revenue requirements to specific class segments in a manner that reflects cost-causation, or that at least can be justified within a zone of reasonableness for ratemaking purposes. Absent such showings, it is not possible to determine if a rate schedule appropriately collects revenue for a particular class segment, or if it creates unacceptable inter-class or intra-class cost shifting.

TEP did not file information sufficient to support a determination of fair value or the cost of service studies necessary to determine if rates are just and reasonable relative to a particular class segment. In fact, both Staff and TASC estimate that the UODG proposed rate will not cover the cost of the program, leaving a certain revenue shortfall that will likely be made up by non-participating members of the residential class.[26] However, the Commission has no information upon which to understand the potential magnitude of that amount. Moreover, without the crucial details of contract terms, there is insufficient information to determine whether the rate will be just and reasonable.

What is clear from TEP's filing is that the proposed UODG rate is untethered to the cost of providing service to a group of customers and it would not necessarily vary based a customer's consumption. The details of the UODG proposal are far too lacking to determine if there is any factual justification, on cost-causation principles or otherwise, for the proposed

[26] Staff Report at p. 7.

UODG rate. Accordingly, there is no basis in the record of the proceeding on which to find that the proposed rate is just or reasonable. The UODG tariff cannot be approved on the record of this proceeding.

III. The Staff Report Inappropriately Characterizes TEP's UODG Proposal As A Pilot Program When TEP Has Proposed Its UODG Program As Ongoing.

The Staff Report states that 'TEP's proposal should be reviewed as a pilot program...'[27] However, in response to data requests from Staff, TEP indicates its UODG Proposal is merely the first year of an ongoing incursion into the private-sector solar market that would grant TEP ownership of approximately one out of every four solar systems installed in its service territory between now and achievement of full compliance under the REST.[28] TEP proposes a massive expansion of its state-sanctioned monopoly into a market for onsite solar service that is currently competitively served in Arizona. TEP's proposal violates the public's interest in placing necessary limits on the scope of regulated monopoly service and promoting competition in markets where there is no benefit to service being provided by a single, state-sanctioned monopoly. TASC briefed this issue extensively in comments previously filed and will not repeat its arguments here.

IV. The Staff Report Fails To Adequately Evaluate Alternatives To The Questionable Ancillary Benefits Claimed By TEP.

In its analysis, Staff addresses TEP's claimed non-economic benefits of its utility-owned DG proposal.[29] Although TASC agrees that some of the stated non-economic benefits could have value, these benefits can be achieved through customer and third-party-owned solar installations and are not unique to utility ownership.

TEP can achieve almost all of its claimed non-economic benefits by partnering with solar installers and customers. For example, the Staff Report claims that TEP 'would be able to use its new systems communication network it is currently developing to allow TEP to communicate

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[27] Staff Report at p. 7.

[28] TEP Response to Staff's First Set of Data Requests (DR), Question 1.10, indicating that, with continued funding for the program at the requested first-year level, TEP would own 25% of the distributed solar generation in its service territory needed to meet the 2025 REST compliance target.

[29] Staff Report at p. 7.

with and control the inverters on systems installed under the proposed program to provide benefits to the grid, such as voltage and frequency support.'[30] However, there is no reason why TEP cannot work with Commissioners and stakeholders, including other utilities, to test and deploy advanced inverters for the benefit of the entire system.

TASC believes that if the Commission, Staff and TEP were to examine these issues in detail, they would find that distribution management platforms should be designed using an open architecture to stimulate innovation. This would mean that distribution systems would be segmented into modular designs with three architectural components: 1) utility control system, 2) physical communications systems, and 3) customer controls and devices. In such an open architecture model, the utilities own and manage the utility management system while leaving the communications and customer controls and devices to the market so as to encourage utilization of existing infrastructure and future innovation.

This open architecture also provides superior flexibility for future needs, as investment is channeled into an adaptable platform that can integrate a variety of industry and customer assets including advanced inverters. Conversely, the vertically integrated approach risks the utility ending up with a stranded asset once the communications infrastructure and customer-sited assets become obsolete. Prior to pursuing a vertically integrated approach as TEP requests, TASC encourages the Commission to investigate this issue in more detail. TASC would welcome the opportunity to work with stakeholders and to share TASC's experiences in other areas of the country. Such a dialogue would help to ensure that the Commission makes an informed decision for Arizona. In short, through an open architecture, these goals can be achieved regardless of who owns the PV systems.

Similarly, the Staff Report discusses the benefits of TEP targeting installations to 'areas on its grid where DG will provide the most benefits to utility operations.'[31] TEP could also encourage private market investment in solar installations in strategic areas to maximize benefits by transparently providing locational customer incentives and information through GIS mapping or other accessible methods. It makes sense that there are locational benefits to siting solar in

[30] *Id.*
[31] *Id.*

certain areas. However, TEP does not need to burden its customers with the high and unnecessary costs of utility ownership when it could very likely encourage private investment in these areas at far lower costs. The Staff Report also does not appear to consider that there are less expensive ways to realize these locational benefits. TASC again encourages the Commission and staff to complete full due diligence prior to determining that these benefits can only be secured through utility ownership. Rather than work with the market to encourage its customers to install systems to maximize what they have predetermined to be beneficial to the grid, TEP has decided to take the most costly route for its ratepayers and to own the systems itself.

Finally, the Commission should reject TEP's contention that its program is justified because it provides some of its customers a chance to acquire solar 'due to financial constraints and/or low credit scores.'[32] This is not the primary purpose of a public utility. Approving a program based on this policy objective leads the Commission down a slippery slope where the monopoly is soon providing goods and services in an otherwise competitive market under the guise of a public welfare program. If part of TEP's charter is to bring goods and services that are normally provided by the private sector into the hands of its customers who, for whatever reason, are not in a position to acquire them on their own, then what is to stop the utility from owning and leasing Energy Star appliances, electric cars, NEST systems, and many other energy-related systems and devices that the public desires? TEP is charged with providing an essential public service, not with assuring that all of its customers have access to the latest technology at below-market prices.

TASC members work day-in and day-out to deliver solar to all people. When national solar companies started attracting private investment several years ago, they had to prove out the risk to investors. In the beginning, as with many technology products, costs were high and therefore investors only felt comfortable with customers with very high FICO scores. Now, less than five years later, the majority of customers are near or below the median income level for the state and proving of risk has made investors comfortable with credit scores over 100 points lower

[32] *Id.*

than they originally had. The proving of customers with lower credit continues as the market matures.

V. Conclusion

TEP does not request cost recovery for the UODG proposal through the REST mechanism.[33] As such, there is no reason to include the UODG proposal in the TEP REST Implementation Plan. In fact, the likely reason TEP included this non-REST item in its REST Plan is to use this approval against the Commission in a future rate case to try and justify cost recovery. If the Commission authorizes TEP to move forward, TEP will imprudently incur costs that the Commission will have to disallow at a later time. TEP will no doubt argue at that time that rejecting its cost recovery will damage TEP's credit rating and its cost of capital and be contrary to the approval it would have been granted in this docket. Prudency of *all* costs related to this proposal are in doubt given the illegality of the proposal and the existence of lower cost alternatives. As such, the Commission should approve the remainder of the REST Implementation Plan and reject the UODG Proposal.

Respectfully submitted this 19th day of November, 2014.

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[33] Staff Report p. 6 ("TEP is not seeking any cost recovery through the 2015 REST plan and would seek recovery of expenditures under this program in TEP's next rate case.")

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